SUPREME COURT, U. S.

No. 891

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JOHN F. DAVIS, CLERK

IN THE

Supreme Court of the United States

October Term, 1967

W. WILLARD WIRTZ, Secretary of Labor, United States Department of Labor,

Petitioner,

against

HOTEL, MOTEL AND CLUB EMPLOYEES UNION, LOCAL 6.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

RESPONDENT'S SUPPLEMENTAL BRIEF

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The Secretary of Labor Has Conceded that Prior Service Requirements Are Reasonable

Respondent submits this supplemental brief to bring the Court's attention to certain relevant interpretations and rulings of the Department of Labor (now available to the public pursuant to the Public Information Act, Public Law 89-487) which came to our attention since the service and filing of our main brief.

In the LMRDA Interpretive Manual of the Department of Labor,* the Secretary has ruled that a qualification for candidacy which requires two years prior service on the executive board of a union in order to be eligible for

* Although the Secretary has made these rulings available to the public, we have been advised by the Secretary's office that he will not disclose the names of the people or organizations referred to or the dates upon which said rulings were promulgated.

executive office, although "such a provision does tend to severely restrict the number of people eligible for certain offices" is not per se unreasonable.

> "422.270 Two Years Membership on Executive Board
>
> A provision in the constitution of a local union which requires two years of membership on the executive board in order to be eligible for certain executive offices is not per se unreasonable.
>
> While such a provision does tend to severely restrict the number of people eligible for certain offices, we note that there is equal opportunity for all members of the local to become members of the executive board and thus become eligible for the specified offices."
>
> (*LMRDA Interpretive Manual,* U. S. Dept. of Labor, Section 422.270.)

These rulings cannot be reconciled with the position taken by the Secretary in this case (Sec. Brief, p. 14) that "... Congress * * * may be assumed to have taken as its model elections generally conducted in the United States"; and that

> "... it has not been the scheme of democracy in this country to insure competence by requiring prior public service on the part of candidates. The idea has instead been to place trust in the common sense and judgment of an informed electorate." (Sec. Brief, p. 17)

The above quoted ruling of the Secretary demonstrates that he agrees with Judge Hays in the Court below that "... it is not self-evident that basic minimum principles of union democracy require that every union entrust the administration of its affairs to untrained and inexperienced rank and file members" (A. 320).

In another ruling contained in the Interpretive Manual, the Secretary places his imprimatur upon qualifications for

candidacy which, as in the case at Bar, are ". . .. designed to assure that [the] candidates have participated in the affairs of the union and are sufficiently familiar with the industry in which the union operates. . . ."

> "422.250 Participation in Union Affairs
>
> Qualifications reasonably designed to assure that candidates have participated in the affairs of the union and are sufficiently familiar with the industry in which the union operates, would not be considered unreasonable in ordinary circumstances, if uniformly imposed. In the absence of knowledge of any special circumstances which cast doubt upon the validity and reasonableness of any of the qualifications they are not to be considered unreasonable in themselves."
>
> (*LMRDA Interpretive Manual,* U. S. Dept. of Labor, Section 422.250.)

The Court below held that it is not the Secretary's function to substitute his judgment for the judgment of the membership.

> "It is not the function of the Secretary to determine what prescribed qualifications for office will best serve the purposes of union democracy nor to dictate what policy unions should follow in limiting candidacy for union office. The union's own rules as to eligibility must prevail unless they impose unreasonable qualifications. We are persuaded that in the present case the Secretary has trespassed upon an area of union governance which is left by the statute to the union's decision." (A. 321)

These interpretive rulings of the Secretary further demonstrate that the Court below correctly held that the prior service requirement contained in the Union's By-Laws is reasonable within the meaning of the Act.

Respectfully submitted,

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Attorneys for Respondent.